LEE KAY GUAN & ANOR. v. PHOENIX HEIGHTS ESTATE (PTE) LTD.

[O.C.J. (Choor Singh J.) January 23, 1978]
[Singapore — Suit No. 4663 of 1975]

Land Law — Sale agreement of house — Delay in issuance of Certificate of Title hence developers' inability to complete in time — Issuance of T.O.L. for occupation of house — Purchasers' refusal to occupy house for some period — Purchasers claimed for damages from agreed date of completion to date of issuance of Certificate of Title.

Contract — Sale agreement of house — Claim for damages for breach of — Date of completion stipulated in agreement — Delay in completion due to late issuance of Certificate of Title — Purchasers' refusal to occupy after grant of T.O.L. — Claim for damages from agreed date of completion to date of issuance of Certificate of Title.

The plaintiffs purchased a house from the defendants under a Sale Agreement which provided that the sale and purchase was to be completed on or before June 30, 1973. The Sale Agreement also provided that if the defendants failed to complete, the defendants would pay the plaintiffs liquidated damages from the appointed date to the date when the notice to complete was actually given. The house was finally completed in November 1974 and on November 28, 1974 the building authority issued a Temporary Occupation Licence for the house to be occupied by the purchasers/plaintiffs. The latter, for some reason best known to themselves, refused to occupy the house until April 17, 1975. They claimed damages.

The defendants admitted liability for damages up to date of issuance of T.O.L., i.e. on November 28, 1974 and damages calculated up to that date had been paid to the plaintiffs. The issue before the court was whether the defendants were liable for damages for the period November 28, 1974 to December 8, 1975 when the defendants gave to the plaintiffs the requisite notice to complete.

Held, dismissing the claim: the defendants were not liable for damages for the period in issue. The plaintiffs purchased the property, a dwelling house, for their own occupation. Between November 28, 1974 to April 16, 1975 the plaintiffs had, of their own accord and without valid reason, refused to occupy the house. During the period April 17, 1975 to December 8, 1975, the plaintiffs were in occupation of the house and suffered no financial loss.

[Editorial Note: An appeal against this decision is pending before the Court of Appeal.]

CIVIL SUIT.

Cheng Tim Pin for the plaintiffs.

Peter Guok for the defendants.

Choor Singh J.: The plaintiffs' claim in this action was for damages for breach of contract.

The facts are not in dispute and they are these. The plaintiffs are the purchasers of the defendants' house known as No. 8 Phoenix Garden, Singapore. The defendants are the developers of the said property. Under the Sale Agreement the house was to be ready for occupation and its sale and purchase was to be completed on or before June 30, 1973. The Sale Agreement also provided that if the defendants failed to complete the sale and purchase as aforesaid, the defendants shall pay to the plaintiffs liquidated damages calculated from day to day in respect of the period commencing from the appointed date to the date when the notice to complete was actually given at the rate of nine per cent per annum on the purchase price of $180,000.

There was considerable delay on the part of the defendants in completing the house. It was finally completed in November 1974 and on November 28, 1974 the building authority issued a Temporary Occupation Licence for the house to be occupied by the purchasers. The plaintiffs for some reason best known to them, refused to take possession and occupy the house on November 28, 1974. The house lay vacant until April 17, 1975, when, again for some reason best known to them, the plaintiffs took possession and occupied the house. They also commenced these proceedings claiming damages.

The defendants admitted that they were liable for damages up to the date when the T.O.L. was issued, i.e. November 28, 1974 and damages calculated up to that date have been paid to the plaintiffs.

The dispute in this case is as to whether or not the defendants are liable for damages for the period November 28, 1974 to December 8, 1975 when the defendants gave to the plaintiffs the requisite notice to complete. The defendants maintained that they were unable to issue a notice to complete earlier because they could not make a title to the land and premises for reasons beyond their control. The issue of the Certificate of Title which was required to be produced at the completion, was delayed by the competent authority without the fault of the defendants.

In my judgment, on the facts of this case, the defendants were not liable for damages for the period in issue. The plaintiffs purchased the property, a dwelling house, for their own occupation. There was no evidence that they purchased it for re-sale or that they had in fact entered into a sub-sale agreement in consequence of which they had suffered financial loss. The house was ready for occupation on November 28, 1974 and authority to occupy it was granted by the Building Authority in the form of a T.O.L. The plaintiffs had no valid reason for not taking possession and occupying it on November 28, 1974.

The plaintiffs' claim for damages is in essence a claim for compensation for financial loss suffered by them from November 28, 1974 to December 8, 1975. It is therefore necessary to ascertain what loss, if any, they suffered during that period. The relevant period can be split up into two periods, November 28, 1974 to April 16, 1975 and April 17, 1975 to December 8, 1975. During the latter period the plaintiffs were in occupation of the house. They suffered no financial loss at all. During the first period, November 28, 1974 to April 16, 1975, they could have been in occupation of the house. They were offered possession of the house on November 28, 1974 with the necessary authority from the Building Control Division in the form of a T.O.L. They refused to take possession of the house and gave no valid reason for not doing so. In my judgment, for this period also, they were not entitled to any damages.

For these reasons I held that, on the facts of this case, the plaintiffs were entitled to damages only up to November 28, 1974 when a T.O.L. was issued and they were offered possession of the house.

Claim dismissed.

Solicitors: *Yap & Yap; Guok & Co.*